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January 12, 2023

Honorable John Cronan
United States District Court Judge
United States Courthouse
500 Pearl St. Room 1320
Southern District of New York

Via ECF & email

New York, New York

Re: *United States v. James Kim (Byung Houn Kim)* 19 CR 392 (JPC)

Dear Judge Cronan:

I am submitting this letter in connection with James Kim's sentencing that is scheduled before your Honor on January 25, 2023. I ask the Court to consider this letter brief with attached letters from his family and friends. I also ask the Court to consider the 5K1.1 letter submitted by the Government, and the pre-sentence report ("PSR"). We respectfully request the Court sentence Mr. Kim to a non-custodial sentence of time served and one-year supervised release.

I have attached the following letters on James's behalf for the Court's consideration:

- 12/30/22 letter from John Kim (James' son)
- 12/26/22 letter from Charlie Kim (James' son)
- 12/30/22 letter from Suzie Chung (James' niece)
- 12/27/22 letter from Yan Kim (James' friend)
- 12/31/22 letter from Jin Kim (James' friend)

I. Background

On May 28, 2019, James Kim pleaded guilty pursuant to a cooperation agreement. As is detailed in the Government's 5K1.1(a) letter and the PSR the offenses were serious. The Government's 5K1.1(a) motion outlines Kim's extraordinary cooperation. His cooperation directly led to the indictment, and conviction of Edward Shin. Kim's acceptance of responsibility was immediate and complete. From the beginning Kim was extremely forthcoming with the Government and provided truthful information that was crucial to the Government's investigation and prosecution of Edward Shin. Moreover, James's cooperation began **before** any criminal charges were filed against him. (Gvt. 5K1.1 Motion)

II. Personal Background

James Kim is 66 years old and has no prior criminal history. (PSR ¶¶ 40-45) James was born on November 29, 1956 in Seoul, South Korea and was raised with his five siblings by his parents in Seoul, South Korea. (PSR ¶¶ 46-47) His family was close

and supportive but the family experience financial difficulties as a result of the Korean War. (PSR ¶47) He explained that due to the struggling economy after the war, there were times that his family did not have any food but that his parents, who are now deceased, did the best they could to provide for their six children.*Id.* During his sophomore year, James dropped out high school in South Korea to start working to help provide financial support to his family. James also served in the Korean Army reserves. In the 1970s. (PSR ¶¶ 59-60)

James came to the United States in May of 2007 and became a naturalized United States citizen on December 19, 2012. (PSR¶ 48) In 1990, prior to coming to the United States, he married Kyung Mee Lee in South Korea. They have two sons, John age 31 Charles age 27 who were both born and raised in New York.*Id.* James was extremely hard-working and made many personal sacrifices to provide for his two sons. Both of his sons letters reflect upon how James was an excellent father and provider putting both through college in his new country to become the first in their family to graduate from college. (See letters and PSR ¶¶ 49, 51)

James work history in the United States was primarily in the commercial real estate industry as a broker in New York and New Jersey. (PSR ¶¶61-66) Since August of 2022, James has been working part-time as a donut maker at Mochi Donuts and is paid approximately \$400 a week. (PSR ¶62)

James has had numerous health-related issues. In 2014, he was short of breath and hospitalized for blockage in his arteries. (PSR ¶ 54) In 2015, he was in a serious car accident when a car that he was a passenger in that had a motor vehicle accident with a truck. (PSR ¶ 55) As a result of the serious accident, he suffered a broken left leg, broken

pelvis, and broken right knee.*Id.* He underwent three surgeries and was hospitalized for approximately 100 days.*Id.* He still experiences some lasting effects of those injuries.*Id.* He is also taking eight different medications for high blood pressure, high cholesterol, pain and heart related issues. (PSR ¶ 56) The medical records provided to probation also reflect that he has been diagnosed with hypertension, atherosclerosis of the coronary artery, gout, hyperlipidemia, traumatic arthropathy of his left hip, prostate hyperplasia, prediabetes, intestinal metaplasia, fatty liver and obesity.*Id.* James has no history of alcohol or drug abuse and no history of mental health issues. (PSR ¶¶ 57-58)

III.Sentencing Guidelines

The United States Probation Office prepared a Pre-Sentence Report (“PSR”) that includes the following calculation under the Federal Sentencing Guidelines (“U.S.S.G.”):

Base Offense Level	7 (U.S.S.G. § 2B1.1(a)(1))
Pursuant to §2B1.1(b)(1)(J) the loss amount exceeded \$3,500,000 but was less than \$9,500,000 the base offense level is increased by..18	
ADJUSTED OFFENSE LEVEL(subtotal)	<u>25</u>
Acceptance of Responsibility..... & (b)	-3 (U.S.S.G §3 E1.1(a))
Total Offense Level	<u>22</u>

The corresponding guideline range is 41 to 51 months. However, at Edward Shin’s sentencing hearing the Court determined that the applicable fraud loss amount was between \$250,000 to \$550,000 and the increase to the base offense level was 12.(U.S.S.G

§2B1.1(b)(1)(G) We ask that the Court apply the same fraud loss amounts to James Kim. As such, his adjusted offense level would be 19 and after applying acceptance points the total offense level 16 with a corresponding guidelines on 21 to 27 months.

IV. JAMES KIM'S SUBSTANTIAL ASSISTANCE

James's voluntary cooperation came at a risk to his safety. The Korean community is a very tight knit community and on August 2, 2019, after James began cooperating he was confronted by 2 unknown individuals at his home. James reported this encounter to the case agents. The agents investigation did not result in any arrests of these unknown individuals but this encounter left James shaken.

He has also provided truthful inside information about his co-conspirator Edward Shin that the government was able to corroborate and ultimately the jury rejected Shin's version. (Govt. 5K1.1 Motion) The Government also reports that his insider information and documents provided a complete picture of the crucial events of the fraudulent schemes. As a result of James's complete cooperation, he provided information that the government did not already possess that exposed him to additional penalties.

a. SUBSTANTIAL ASSISTANCE

Section 5K1.1 of the U.S. Sentencing Guidelines provides:

Upon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of other persons who has committed offenses, the court may depart from the guidelines.

The 5K1.1 factors to be considered by a sentencing Court are similar to the factors considered by the United States Attorney's Office in determining whether they will make a motion pursuant to this section.

5K1.1 states that:

- (a) The appropriate reduction shall be determined by the court for reasons stated that may include, but are not limited to, consideration of the following:
 - (1) the court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered;
 - (2) the truthfulness, completeness, and reliability of any information or testimony provided by the defendant;
 - (3) the nature and extent of the defendant's assistance;
 - (4) any injury suffered, or any danger or risk of injury to the defendant or his family resulting from his assistance;
 - (5) the timeliness of the defendant's assistance.

In assessing these factors, the usefulness of the information provided by Mr. Kim was significant and truthful. It directly led to the conviction after trial of Edward Shin the former CEO of Noah Bank.

This cooperation also assisted the government and the jury in assessing the credibility of Edward Shin who testified at trial. Each and every fact that James provided was consistent with the information that the investigating agents had developed during the criminal case. As mentioned above, his cooperation also created a risk of injury to him. Lastly, James's cooperation was timely as it was before any charges were initiated. (Government 5 K1.1) All of the 5K1.1 factors are satisfied.

**V. APPLICATION OF THE 3553(a) MANDATE AND FACTORS
WARRANTS A NON-GUIDELINE SENTENCE FOR JAMES KIM**

The challenge in this case, like all cases, is to determine a fair sentence that is sufficient but not greater than necessary. We can start with the general agreement that crimes involving the possession, receipt and distribution of narcotics and firearms are serious.

The overriding principle of 3553(a) requires a district court to impose a sentence "sufficient, but not greater than necessary," to satisfy the four purposes of sentencing set forth in 3553(a)(2). The four purposes of sentencing set forth in 3553(a)(2) are: (A) to reflect the seriousness of the offense, to promote respect for the law and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant and (D) to provide the defendant with the needed educational or vocational training, medical care or other correctional treatment in the most effective manner.

The overriding principle of imposing a sentence that is sufficient *but not greater than necessary* to achieve these ends requires that the Court must also take into account 18 U.S.C. § 3582, especially when considering rehabilitation, the fourth purpose of sentencing under 3553(a)(2)(D). (emphasis supplied) 18 U.S.C. § 3582(a) states that the court, in analyzing the 3553(a), factors must recognize that imprisonment is not an appropriate means of promoting correction and rehabilitation.

In determining whether the sentence is sufficient to comply with the 3553(a)(2) purposes of sentencing factors listed in § 3553(a). These factors are:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the kinds of sentences available;
- (3) the now advisory sentencing guidelines and policy statements;
- (4) the need to avoid unwarranted sentencing disparity; and
- (5) the need to provide restitution where applicable.

None of these factors are to be given greater emphasis than another. However, all of the factors are subservient to the overriding mandate to impose a sentence not greater than necessary.

a. The nature and circumstances of the offense and the history and characteristics of the defendant (3553 (a)(1))

The nature and circumstances of the offense are serious. James' involvement in the bank fraud and kickback scheme led to millions of dollars of fraudulent loans that otherwise would not have been funded by the bank or insured by the SBA. However, the Court must counterbalance the severity of the fraud against history and characteristics of James Kim his lack of criminal history and his immediate and vital cooperation provided to the government and at trial warrants a non-guideline sentence of time served and supervised release of one year.

b. The sentences available (3553(a)(3))

We agree with probation that a variance to a non-guideline is warranted, however, we are asking that Court go even further than probation is recommending and sentence Mr. Kim to a sentence of time served one year of supervised release without community service. Although community service may be appropriate in some cases, it is respectfully submitted that 200 hours of community service is unnecessary here. Especially in light of

the fact that the only employment James has been able to secure is as a donut maker making \$400 a week.

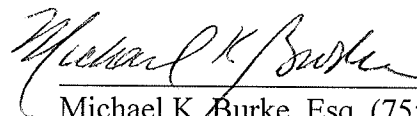
Mr. Kim' is facing greater degree of punishment owing in part to his cooperation. By revealing his participation in this scheme, he has been shunned by his tight knit Korean community and faced an intended threat by unknown individuals who came to his home after he began cooperating.

VI. CONCLUSION

It is respectfully requested that the Court sentence Mr. Kim to a non-guideline non-custodial sentence of time served which would be sufficient to satisfy the sentencing factors but would reasonable and not greater than necessary.

Dated: January 13, 2023
White Plains, New York

Respectfully submitted,



Michael K. Burke, Esq. (7554)
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(845) 294-4080

To: Tara La Morte, Esq
Assistant United States Attorneys
United States Courthouse
Southern District of New York
One St. Andrews

by ECF & email

New York, New York

John Kim
6605 White Oaks Lane
Frisco, TX 75035

12/30/2022

Honorable John P. Cronan
United States District Court Judge

Dear Honorable Judge Cronan,

My name is John Kim and I am the older son of James Kim. I currently reside in Frisco, TX with my wife and 3 children, but we all grew up in the New York City area and moved to Texas in 2020. I attended New York University for my undergraduate degree in Finance and Economics, and I currently work in the financial services industry. Although my parents are located in New York, we continue to maintain a good relationship from across the country.

I'm writing to you today because of the events that have unfolded and ultimately led to my father's guilty plea. I wanted to shed some light on my father's character and ask for your consideration and leniency during his upcoming sentencing.

My father is a first-generation immigrant who left the comfort of his home and family in South Korea to start a new life for our family in New York. He is a family man who supported us the only way he knew how, by working countless hours in an unfamiliar setting, not knowing the culture or language and without any support. I remember how he tirelessly worked to make ends meet and the many sacrifices he had to make to raise my brother and me. He is a resilient and hardworking man who never gave up even when faced with financial struggles and other obstacles – he tackled them head on and shouldered these burdens for the sake of our family. With our father's support, my brother and I were able to earn undergraduate degrees and pursue careers in technology and finance.

My father is also a compassionate and generous man, one who always offers his time and energy to help those around him. I remember that he was someone that many first-generation immigrants turned to, for advice and for help in times of need. He was always willing to buy someone a meal and chat, and he had a great reputation among the Korean community. He always smiled, laughed, and shared life with his peers, and he encouraged those who were also struggling alongside him to support their families.

Growing up with a father like James was a blessing and I always considered him my role model. Though he is not perfect, I believe that he will continue to strive to be the best person he can be and to learn from his mistakes. As mentioned before, he is someone who is willing to help others at his own expense and I truly believe that he will continue to be a positive force in his community and among his peers.

Thank you again for your time and careful consideration. We request your leniency during your judgement and we hope that this letter and those from others show the support for my father and his character.

Respectfully,

John Kim

Charlie Kim
2416 N. North Creek Ln.
Fullerton, CA 92831

12/26/2022

Honorable John P. Cronan
United States District Court Judge

Dear Honorable Judge Cronan,

My name is Charlie Kim, and I am the son of James Kim. I'm currently residing in Orange County, California, and am working full time as an Associate in the financial technology (fintech) industry. I have been working full time since 2018. Born and raised in New York City, I lived there until my move to California in late 2020. I completed my undergraduate degree in 2018, and prior to attending college, I, in my role as a board member of my high school's honor society, helped underprivileged students prepare and solidify their college applications and future plans.

I am aware of my father's legal proceedings and have found myself surprised as the events that unfolded seem to be disconnected to his usual character and attitude. With respect to James' guilty plea, I fully support James and humbly ask for leniency in his sentencing.

As James' son, I have known him my whole life and I continue to have a great relationship with him to this day. As a father, James has always done his best to provide for our family, in spite of the various struggles he and our family went through as low income immigrant minorities. Despite all of the hardships we experienced growing up, due to my father's sacrifices and support, my brother and I lived very fulfilling and successful lives. With his financial support, my brother and I were able to obtain our college degrees and gain and maintain full time employment in the financial / technology industries for several years, which will have a deep impact into furthering the lives of our future children and grandchildren.

My father's character has always been marked by friendliness, a willingness to help others before helping himself, sacrifice, love, and affection. Although he is an Asian male born in the '50s, he is different from most other Asian males of his generation, who are generally described as strict, unemotional, apathetic, and unavailable. James is quite the opposite – he is emotional, loving, caring, and always available to talk to or share my struggles with.

To name a couple of specific experiences I have had with James, I have fond memories of attending church together and helping out the senior community in our area during the holidays. Growing up, James helped me with my math homework and always made sure I understood what I was doing and why. When I pick up the phone to call my father now that I'm across the country, I'm always greeted by a cheerful "Charlie!", which I always appreciate and look forward to.

Sincerely,

Charlie Kim

Suzie Chung
103 Myles Avenue
Levittown, NY 11756

12/30/2022

Honorable John P Cronan
United States District Court Judge

Dear Honorable Judge Cronan,

My name is Suzie Chung and I am writing this letter on behalf of James kim who is my uncle. I am a NY & NJ Licensed Insurance broker at Good Guy's Insurance company based in Fort Lee, New Jersey. I also work as a real estate agent and have worked with my uncle James on several cases, big and small, for the past 6 years that I have worked in this field. It's been a pleasure to work with him on a professional level because I am always able to learn a great deal from his wealth of knowledge in this field. I am proud of my uncle James who has earned the trust and the respect of his peers and colleagues in the Korean community for the past 30 years.

There were countless times throughout my life where my uncle James supported me and came to my rescue. About 5 years ago, in April of 2017, I had a car accident and my car had to be sent off to the junkyard. I was left with no car and was in a financial bind, so I really couldn't afford to get a new car. James stepped in and lend me his new car for about 2 months during which time I was able to gather the down payment to lease a new car. Knowing fully well that Its' not easy to let someone borrow your car, even if that person is a family member, I was forever grateful. I will never forget his generosity. Furthermore, he didn't ask for anything in return! I was so touched by his kindness. Maybe that explains why my uncle has so many friends.

On many occasions, I have seen my uncle James giving away a few bucks to the homeless on our way. I know he is not a millionaire by any means, but his little act of compassion and kindness always brightens up someone's day. His small act of kindness always comes out in a big way.

Another characteristic of my uncle James that is noteworthy is that he is a 'Peacemaker'. Whenever there is a conflict or squabble of some sort among family members or friends, and I assure you there are lots of them, my uncle James always comes to the rescue. I gave him the nickname 'peacemaker' for this reason. He is very articulate in his words and can talk reason into someone who has lost all reason and sanity. One drop of his witty humor sends the whole room into a laughter. There were many meetings and get togethers that my uncle James saved and I am thankful.

James Kim, without a doubt in my mind, is a positive character that can affect the world in a positive manner. Although he has made a mistake in the past, I truly believe he is a character capable of learning from his mistakes. I have been following his trial and will continue to give him all my support, as he has done for me. I respectfully ask for your leniency and consideration in this case. Thank you.

Respectfully,
Suzie Chung

Yun S. Kim

271 B Hillside Ave.,

Palisades Park, NJ 07650

917-710-4115 Yunkim@1stdown.net

December 27, 2022

Re: United States v. James Kim

To: Honorable Judge John P. Cronan

United States District Court Judge

I have known James Kim as a good friend for over ten years. I was both troubled and surprised to hear about his case as he has always been a rather solid person. It is for this reason I am happy to write a letter of reference for Mr. James Kim regarding this matter. I understand the seriousness of this matter however, hope the court will show leniency.

James Kim has always been an upright character in the community and helps Korean business community. In our friendship, he has really been there for me and family, especially when I lost my son and mother. He made it a point to be there and show a significant amount of support during my hard times. It was James Kim that was a source of camaraderie for both me and my family. He has truly been a good friend over the years.

In addition to our friendship, he is usually an upstanding member in the our Korean Community. While it is unfortunate that he has made some bad decisions, thus resulting in this case. While I was surprised to hear of the misconduct, it comes as no surprise that he is ready to accept responsibility for his action. I believe that as we move forward, he will emerge a better person. In short, James Kim expressed deep sense of remorse in making such a serious mistake and I believe in his ability to pay his debt to society

It is my sincere hope the court takes this matter into consideration at the time of sentencing. Despite the current case, I still believe James Kim to be an honorable individual, a valuable member of my community, and good human being.

Sincerely,



Yun S. Kim

Honorable John P. Cronan
United States District Court Judge

Re: United States V. James Kim

Dear Honorable Judge Cronan:

My name is Jin Kim.

I am 70 years of age and have been employed as operating manager at Super Value Drugs, a pharmacy located at 29-26 Union Street, Flushing, NY 11354 since year 2017.

Before Super Value Drugs, I worked as Supervising Manager for New York Institute of Business Technology (NYIBT), an independent non-profit educational organization with a mission of enriching students with useful knowledge and applicable skills for further study and better employment for 20 years from Year 1987 to Year 2007.

I have known Mr. James Kim over 30 years.
Being my office at 1460 Broadway, New York, NY 10036 and Mr. Kim working as a business broker based in Manhattan, we got closer after coming across at restaurants in Korea Town.

Mr. Kim was a professional business broker to help his client grow by finding and introducing profitable business and happy man everyone wants to be with.

I witnessed many businesses, especially deli-groceries and restaurants which opened thru Mr. Kim's brokerage in Manhattan prosper before the 2007 financial crisis. Even after 2007 crisis, survivors are thankful for Mr. Kim's brokerage.

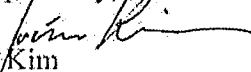
Mr. Kim has been optimistic enough to encourage people in distress out to a brighter hope. Mr. Kim was a survivor of the tragic car accident in the 2019 new year chain collision in Pennsylvania on a snowy and slippery road. I never heard him accuse anyone for the accident, rather he thanked he could breathe even with on his broken body and went thru the rehabilitation. His optimism and willingness to help and cooperate with others saved his life and keeps him moving.

I am aware he was involved in some unexpected wrongful acts and found guilty after entering a guilty plea and is about to be sentenced.

I make a humble New Year's wish that your generosity will give another chance for my friend to lead a normal daily life as a citizen.

December 31, 2022

Respectfully,



Jin Kim

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